

EARNEST HENDERSON, et al,
 Plaintiffs,
 v
 CITY AND COUNTY OF SAN FRANCISCO,
 et al,
 Defendants.

No C-05-234 VRW
 ORDER

Plaintiffs, who are present and former inmates of the San Francisco County Jail, claim that the individual sheriff's deputy defendants violated plaintiffs' due process rights by using excessive force against plaintiffs and were deliberately indifferent to plaintiffs' serious medical needs during five separate incidents between December 2003 and December 2004. Plaintiffs also allege that the City and County of San Francisco, the San Francisco Sheriff's Department, the San Francisco Department of Public Health Services and Sheriff Michael Hennessey established various customs and practices that enabled the deputy defendants to violate plaintiffs' constitutional rights. Doc #1.

1 On September 1, 2006, the court ordered defendants to
2 provide plaintiffs with all grievances classified as "complaints
3 against staff" that were filed in San Francisco county jail #2
4 between May 1, 2003, and May 1, 2004. Doc #110. On September 6,
5 2006, defendants requested leave to file a motion for
6 reconsideration of the court's discovery order, Doc #112, and
7 administratively moved to stay the discovery order pending the
8 court's reconsideration, Doc #113.

9 Defendants argue that plaintiffs "cannot be relied on to
10 comply with the court's protective order," which plaintiffs
11 allegedly violated on August 24, 2006, by filing in the public
12 court docket confidential personnel information previously produced
13 by defendants. Doc #112 at 2. Reconsideration is necessary,
14 according to defendants, because the court's discovery order relied
15 in significant part on the existence of the parties' protective
16 order to safeguard confidentiality. Id. As a practical matter,
17 defendants' motion asks the court to sanction plaintiffs' alleged
18 violations by halting discovery ordered by the court on September
19 1, 2006.

20 Wilful violation of a court order, including a
21 protective order, may be sanctionable under the court's inherent
22 power. Chambers v NASCO, Inc, 501 US 32, 43 (1991). The exclusion
23 of evidence is one such sanction. See Unigard Security Ins Co v
24 Lakewood Eng & Mfg Corp, 982 F2d 363, 368 (9th Cir 1992). Because
25 of the severe impact of such a sanction, it must be exercised with
26 restraint. Hence, "if there is a reasonable probability that a
27 lesser sanction will have the desired effect, the court must try
28 the less restrictive measure first." Natural Gas Pipeline Co of

1 America v Energy Gathering, Inc, 86 F3d 464, 467 (5th Cir 1996).

2 Absolving defendants of their duty to produce the
3 grievances under the court's order is not an appropriate remedy.
4 First, because the grievances have not yet been produced, the court
5 cannot assess the effect denying this discovery to plaintiffs would
6 impose. Hence, the court is unable to determine whether
7 defendants' proposed sanction would exceed the punishment necessary
8 to ensure such abuses are not repeated. See Chambers, 501 US at
9 56-57. Second, the court's order of September 1, 2006, resolved a
10 longstanding discovery dispute that consumed exceptional resources
11 of both the parties and the court; for the sake of judicial
12 economy, the court should not disturb this difficult compromise.

13 Accordingly, defendants' request for leave to file a
14 motion for reconsideration is DENIED. Further, the court ORDERS
15 defendants to produce the requested discovery pursuant to the
16 court's order on or before October 9, 2006. If the discovery
17 yields new evidence that would aid the court in deciding the
18 motions presently under submission, plaintiffs shall submit the
19 findings in a letter brief not to exceed ten pages on or before
20 October 19, 2006.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 Regarding plaintiffs' alleged violation of the court's
2 protective order, the court invites defendants to serve and file a
3 motion for such relief as may be appropriate.

4
5 IT IS SO ORDERED.

6
7 

8 _____
9 VAUGHN R WALKER
10 United States District Chief Judge